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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,256	11/14/2003	Jacques Vincent	144-214 CT1 (35619-191315)	3617
23973	7590	08/16/2005	EXAMINER	
DRINKER BIDDLE & REATH ATTN: INTELLECTUAL PROPERTY GROUP ONE LOGAN SQUARE 18TH AND CHERRY STREETS PHILADELPHIA, PA 19103-6996			ASHLEY, BOYER DOLINGER	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 08/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

**Office Action Summary**

Application No.

10/714,256

Applicant(s)

VINCENT, JACQUES

Examiner

Boyer D. Ashley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 May 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2 and 5-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10 and 11 is/are allowed.
- 6) ☒ Claim(s) 1,2 and 5-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

1. This office action is in response to applicant's amendment filed 5/27/05, wherein claims 1 and 5 were amended and claims 3-4 were canceled.

### ***Specification***

2. The abstract of the disclosure is objected to because it contains legal phraseology, e.g., "comprises". Correction is required. See MPEP § 608.01(b).

### ***Terminal Disclaimer***

3. The terminal disclaimer filed on 5/27/05 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent 6,732,622 has been reviewed and is accepted. The terminal disclaimer has been recorded.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-2 and 5-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Phillips, U.S. Patent 1,974,194.

Phillips discloses the same invention as claimed including, for example, vegetable cutter frame with at least one blade (27) facing a slot (the area in front of the cutter) and two side rails (21); a guide chamber with a loading volume (the area shown between top 47 and sides 43 as shown in Figure 2) acting in conjunction with a press

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down cap (top 45 and 46). Phillips includes means (34-38) for adjusting the depth of cut. Phillips discloses the means for adjusting the depth of cut having a ramp (31-32) fitted so as to be capable of translational motion parallel (up and down) to the cutting plane (plane of the blade) and facing the blade at a first end to form the slot (see Figures 2 and 11).

It should be noted that the press down cap is designed to be gripped by a user to move the guide chamber to and fro along the rails while exerting a constant pressure on the workpiece in the loading volume area so as to press them against the at least one cutting blade.

It should be noted that the phrase "while exerting a constant pressure on the vegetables contained in the loading volume ..." in claim 1 is merely functional/intended use not defining any specific structure. Therefore, the Phillips merely has to be capable of performing said intended use. In this case, Phillips is clearly is capable of providing constant pressure on the vegetable to be sliced merely from the user regulating their hand pressure on the handle.

It should be noted that the ramp of Phillips is capable of translational motion parallel to the cutting plane during installation.

As to claim 2, Phillips includes two parallel side uprights (20) connected by a transverse operating handle (35/37) and forming the guide rails (21).

As to claim 5, Phillips includes means (39 locks the ramp in place) keeping the first end of the ramp at a constant distance from the blade. It should be noted that the

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term "short" has not been defined and any distance in Phillips can be considered "short".

As to claims 6-7, Phillips includes at least one foldable foot (26).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Phillips in view of Zirkiev, U.S. Patent 5,745,999.

Phillips discloses the invention substantially as claimed except for at least two removable and interchangeable transverse blade which are selectively; however, the examiner takes official notice that it is old and well known in the art to use multiple interchangeable slicing blades with vegetable cutters for the purpose of creating different types of cuts in vegetables, for example, as taught by Zirkiev. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use multiple interchangeable slicing blades with the device of Phillips in order to create different types of cuts in vegetables.

8. Claims 1-2 and 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Phillips, U.S. Patent 1,974,194, in view of Kim, U.S. Patent 5,765,472.

Phillips discloses the invention substantially as claimed including, for example, vegetable cutter frame with at least one blade (27) facing a slot (the area in front of the

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cutter) and two side rails (21); a guide chamber with a loading volume (the area shown between top 47 and sides 43 as shown in Figure 2) acting in conjunction with a press down cap (top 45 and 46). Phillips includes means (34-38) for adjusting the depth of cut. Phillips discloses a ramp with a pivoting end for adjusting the depth of cut instead of a ramp that is capable of translational motion parallel to the cutting plane and facing the blade at a first end to form the slot. However, Kim discloses that it is old and well known in the art to use ramps that have translational motion parallel to the cutting plane for the purpose of allowing uniform adjustment of the ramp ensure uniform cut thickness. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to have the ramp of Phillips adjust with a translation motion parallel to the cutting plane in order to ensure constant thickness in the workpiece.

It should be noted that the press down cap is designed to be gripped by a user to move the guide chamber to and fro along the rails while exerting a constant pressure on the workpiece in the loading volume area so as to press them against the at least one cutting blade. It should be noted that the phrase "while exerting a constant pressure on the vegetables contained in the loading volume ..." in claim 1 is merely functional/intended use not defining any specific structure. Therefore, the Phillips merely has to be capable of performing said intended use. In this case, Phillips is clearly is capable of providing constant pressure on the vegetable to be sliced merely from the user regulating their hand pressure on the handle.

As to claim 2, the modified device of Phillips includes two parallel side uprights (20) connected by a transverse operating handle (35/37) and forming the guide rails (21).

As to claim 5, the modified device of Phillips includes means (39 locks the ramp in place) keeping the first end of the ramp at a constant distance from the blade. It should be noted that the term "short" has not been defined and any distance in Phillips can be considered "short".

As to claims 6-7, the modified device of Phillips includes at least one foldable foot (26).

9. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Phillips in view of Kim as applied to claim 1 above and further in view of Zirkiev, U.S. Patent 5,745,999.

The modified device of Phillips discloses the invention substantially as claimed except for at least two removable and interchangeable transverse blade which are selectively; however, the examiner takes official notice that it is old and well known in the art to use multiple interchangeable slicing blades with vegetable cutters for the purpose of creating different types of cuts in vegetables, for example, as taught by Zirkiev. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use multiple interchangeable slicing blades with the device of Phillips in order to create different types of cuts in vegetables.

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10. Claims 1-2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kim, U.S. Patent 5,765,472, in view of Zirkiev, U.S. Patent 5,745,999, or Cupper et al., U.S. Patent 2,715,927.

Kim discloses the invention substantially as claimed including, for example, vegetable cutter frame with at least one blade (24) facing a slot (the area in front of the cutter) and two side rails (12/20); a guide chamber (34) with a loading volume; means (48,46,54,78) for adjusting the depth of cut with a ramp (25) that is capable of translational motion parallel to the cutting plane and facing the blade at a first end to form the slot.

Kim lacks the press down cap used in conjunction with the guide chamber such that a constant pressure is on the vegetables. However, Zirkiev and Cupper et al. both disclose that it is old and well known in the art to use press down caps in conjunction with vegetable holders for the purpose of providing constant pressure on the vegetables to be cut thereby ensuring the vegetables are cut to the correct thickness. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use a press down cap with the holder of Kim, as taught by Zirkiev and Cupper et al., in order to ensure the vegetables are cut at the desired thickness.

As to claim 2, the modified device of Kim includes two parallel side uprights (12/14/20) connected by a transverse operating handle (the back wall shown in Figure 1 of Kim at the far right with the slot) and forming the guide rails (shown in Figure 1).



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As to claim 5, the modified device of Kim includes means (56) keeping the first end of the ramp at a constant distance from the blade. It should be noted that the term "short" has not been defined and any distance in Phillips can be considered "short".

11. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kim in view of Zirkiev or Cupper et al. as applied to claim 1 above and further in view of Zirkiev, U.S. Patent 5,745,999.

The modified device of Kim discloses the invention substantially as claimed except for at least two removable and interchangeable transverse blade which are selectively; however, the examiner takes official notice that it is old and well known in the art to use multiple interchangeable slicing blades with vegetable cutters for the purpose of creating different types of cuts in vegetables, for example, as taught by Zirkiev. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use multiple interchangeable slicing blades with the device of Phillips in order to create different types of cuts in vegetables.

#### ***Allowable Subject Matter***

12. Claims 10 and 11 appear to be allowable over the prior art of record.

13. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to anticipate or make obvious the structure of manual vegetable cutter as explained in the previous office action and with further explanation here. The closest prior art device with a food holder and guiding device belongs to Zirkiev, U.S. Patent 5,745,999, which discloses a holder 30 as shown in Figure 3. Zirkiev makes no disclosure of any hollow vegetable receiving portion and clearly does

not show any holder capable of receiving any vegetables therein as shown in Figure 3. Moreover, even if the center portion/pins were to move up and down as alleged in Figure 3 by the arrows, the other pins which are attached to the end portions of the holder are not shown as moving and therefore would prevent any vegetables from being receiving within the semi-hollow portion of the holder.

### ***Response to Arguments***

14. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Applicant contends that Phillips lacks the ramp having translational motion parallel to the cutting plane. However, the examiner respectfully disagrees for the reasons given above.

15. For the reasons above, the grounds of rejection are deemed proper.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Boyer D. Ashley whose telephone number is 571-272-4502. The examiner can normally be reached on Monday-Thursday 7:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 571-272-4514. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Boyer D. Ashley  
Primary Examiner  
Art Unit 3724

BDA  
August 6, 2005